

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-54, and should be submitted on or before January 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2018-27510 Filed 12-19-18; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84823; File No. SR-BOX-2018-37]

**Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change**

December 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2018, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. The fees became operative on December 1, 2018. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxexchange.com>.

**II. Self-Regulatory Organization's Description of the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section VI. (Technology Fees) of the BOX Fee Schedule to establish BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. Connectivity fees will be based upon the amount of bandwidth that will be used by the Participant or non-Participant. Further, BOX Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month. The Connectivity Fees will be as follows:

Connection type	Monthly fees
Non-10 Gb Connection.	\$1,000 per connection
10 Gb Connection .....	\$5,000 per connection

The Exchange also proposes to amend certain language and numbering in Section VI.A to reflect the changes discussed above. Specifically, BOX proposes to add the title "Third Party Connectivity Fees" under Section VI.A. Further, the Exchange proposes to add Section VI.A.2, which details the proposed BOX Connectivity Fees discussed above.

Participants and non-Participants with ten (10) Gigabit ("Gb") connections will be charged a monthly fee of \$5,000 per connection. Participants and non-Participants with non-10 Gb connections will be charged a monthly fee of \$1,000 per connection. The Exchange notes that another exchange in the industry has similar connectivity fees<sup>5</sup> and that several other exchanges

<sup>5</sup> See Miami International Securities Exchange LLC ("MIAX") Fee Schedule. MIAX charges its Members and non-Members a monthly fee of \$1,100 for each 1 Gigabit connection and \$5,500 for each 10 Gigabit connection to MIAX's Primary/Secondary Facility. The Exchange notes a minor difference between MIAX's connectivity fees and BOX's proposal. MIAX prorates their connectivity fees when a Member makes a change to their connectivity (by adding or deleting connections). BOX notes that, like the Exchange's Port Fees and

Continued

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

charge higher connectivity fees.<sup>6</sup> The Exchange also notes that certain fees will continue to be assessed by the datacenters and will be billed directly to the market participant.

Next, the Exchange is amending Section VI.C. High Speed Vendor Feed (“HSVF”) of the Fee Schedule. Specifically, BOX is proposing to delete Section VI.C. and reclassify the HSVF Connection as a Port Fee. The Exchange believes this reclassification is more accurate, as HSVF subscription is not dependent on a physical connection to the Exchange. Instead, subscribers must be credentialed by BOX to receive the HSVF. The HSVF Fee will remain unchanged; BOX will assess a HSVF Port Fee of \$1,500 per month<sup>7</sup> for each month a Participant or non-Participant is credentialed to use the HSVF Port. The Exchange notes that another exchange has a similar classification and charges similar fees.<sup>8</sup>

The Exchange initially filed the proposed fees on July 19, 2018, designating the proposed fees effective July 1, 2018 [sic]. The proposed rule change was published for comment in the **Federal Register** on August 2, 2018.<sup>9</sup> The Commission received one comment letter on the proposal.<sup>10</sup> The proposed fees remained in effect until they were temporarily suspended pursuant to a suspension order (the “Suspension Order”) issued by the Division of Trading and Markets, which also instituted proceedings to determine whether to approve or disapprove the

HSVF Fees, Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month.

<sup>6</sup> See *infra* note 12.

<sup>7</sup> The Exchange notes that with the proposed change discussed herein, Participants and non-Participants credentialed to use the HSVF Port who also have physical connections to the BOX system will be charged for both the HSVF monthly fee and the applicable amount for their physical connections to BOX. For example, if non-Participant X is credentialed to use the HSVF Port and has three (3) physical non-10Gb connections to BOX, non-Participant X will be charged \$1500 for the monthly HSVF Port Fee and \$3000 for the three non-10Gb physical connections to BOX.

<sup>8</sup> See Cboe Data Services, LLC. (“Cboe CDS”) Fee Schedule. Cboe CDS charges its Customers that receive data through a direct connection to CDS or through a connection to CDS provided by an extranet provider \$500 per port per month. Cboe CDS’s port fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. In addition to the data port fee, Cboe Exchange Inc. (“Cboe”) charges connectivity fees based on the bandwidth used to connect to the Exchange to receive such data. See Cboe Fee Schedule.

<sup>9</sup> See Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853 (August 2, 2018) (SR-BOX-2018-24).

<sup>10</sup> See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated August 23, 2018 (“Healthy Markets Letter”).

proposed rule change.<sup>11</sup> The Commission subsequently received one further comment letter on the proposed rule change, supporting the decision to suspend and institute proceedings on the proposed fee change.<sup>12</sup>

In response to the Suspension Order, the Exchange timely filed a Notice of Intention to Petition for Review<sup>13</sup> and Petition for Review to vacate the Division’s Order,<sup>14</sup> which stayed the Division’s suspension of the filing. On November 16, 2018 the Commission granted the Exchange’s Petition for Review but discontinued the automatic stay.<sup>15</sup>

The Healthy Markets and SIFMA Comment Letters (collectively, the “Comment Letters”) argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Comment Letters objected to the Exchange’s reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Comment Letters argued that the Exchange did not offer any details to support its basis for asserting that the proposed fees are consistent with the Act. The Exchange is now re-filing the proposed fees and is also providing additional detail regarding the basis for

<sup>11</sup> See Securities Exchange Act Release No. 34-84168 (September 17, 2018).

<sup>12</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated October 15, 2018.

<sup>13</sup> See Letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated September 19, 2018.

<sup>14</sup> See Petition for Review of Order Temporarily Suspending BOX Exchange LLC’s Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018.

<sup>15</sup> See Securities Exchange Act Release No. 84614. Order Granting Petition for Review and Scheduling Filing of Statements, dated November 16, 2018. Separately, the Securities Industry and Financial Markets Association filed an application under Section 19(d) of the Exchange Act challenging the Exchange’s proposed fees as alleged prohibitions or limitations on access. See *In re Securities Industry and Financial Markets Association*, Admin. Proc. File No. 3-18680 (Aug. 24, 2018). The Commission thereafter remanded that denial-of-access proceeding to the Exchange while “express[ing] no view regarding the merits” and emphasizing that it was “not set[ting] aside the challenged rule change[.]” *In re Applications of SIFMA & Bloomberg*, Exchange Act Rel. No. 84433, at 2 (Oct. 16, 2018) (“Remand Order”), available at <https://www.sec.gov/litigation/opinions/2018/34-84433.pdf>. The Division’s Suspension Order is inconsistent with the Commission’s intent in the Remand Order to leave the challenged fees in place during the pendency of the remand proceedings and singles out the Exchange for disparate treatment because it means that the Exchange—unlike every other exchange whose rule changes were the subject of the Remand Order—is not permitted to continue charging the challenged fees during the remand proceedings.

the proposed fees. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange has always offered various bandwidth choices for physical connectivity to the Exchange for Participants and non-Participants to access the Exchange’s trading platforms, market data, test systems and disaster recovery facilities. These physical connections consist of 10Gb and non-10Gb connections, where the 10Gb connection provides for faster processing of messages sent to it in comparison to the non-10Gb connection. While the Exchange has not charged for physical connectivity before, the Exchange believes that it is reasonable and appropriate to begin charging for this physical connectivity to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry. There are significant costs associated with various projects and initiatives to improve overall network performance and stability, as well as costs paid to the third-party data center for space rental, power used, etc. The Exchange notes that unlike other options exchanges, the Exchange does not own and operate its own data center and therefore cannot control data center costs.

The Exchange also notes that all other options exchanges charge for similar physical connectivity,<sup>16</sup> and by

<sup>16</sup> In addition to the MIAX connectivity fees cited above, Nasdaq PHLX LLC (“Phlx”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE Arca, Inc. (“Arca”), NYSE American LLC (“NYSE American”), Nasdaq ISE, LLC (“ISE”), Cboe Exchange, Inc. (“Cboe”), Cboe BZX Exchange, Inc. (“CboeBZX”), Cboe EDGX Exchange, Inc. (“CboeEDGX”) and Cboe C2 Exchange, Inc. (“C2”) all offer a type of 10Gb and non-10Gb connectivity alternative to their participants. See Phlx, and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which is the equivalent of the Exchange’s 10Gb ULL connection. See also Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of \$7,500 for each 10Gb direct connection to Nasdaq and \$2,500 for each direct connection that supports up to 1Gb. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which is the equivalent of the Exchange’s 10Gb ULL connection. See also Cboe, CboeBZX, CboeEDGX and C2 Fee Schedules. Cboe charges monthly quoting and order entry bandwidth packet fees. Specifically, Cboe charges \$1,600 for the 1st through 5th packet, \$800 for the 6th through 8th packet, \$400 for the 9th through 13th packet and \$200 for the 14th packet and each additional packet. CboeBZX, CboeEDGX and C2 each charge a monthly fee of \$2,500 for each 1Gb connection and \$7,500 for each 10Gb connection.

suspending the Exchange's initial fee filing the Division has placed the Exchange at a competitive disadvantage within the U.S. options industry. Without these fees to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry, the Exchange may not be able to make the planned enhancements to its infrastructure.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,<sup>17</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Connectivity Fees in general constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections. The proposed Connectivity Fees are also expected to offset the costs both the Exchange and BOX incur in maintaining and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements and resources dedicated to software development, quality assurance, and technology support. The Exchange believes that its proposed fees are reasonable in that they are comparable to those charged by another exchange and lower than those charged by several other exchanges. Further, the Exchange believes that the proposed Connectivity Fees are not unfairly discriminatory as they are assessed to all market participants who wish to connect to the BOX network.

The Exchange believes that the proposed HSVF Port Fee is reasonable as it is similar to fees assessed at another exchange in the industry.<sup>18</sup> Further, the Exchange believes that charging Participants and non-Participants for both the HSVF monthly fee and applicable physical connection fees as outlined in the example above is reasonable as it is in line with another exchange in the industry.<sup>19</sup> Further, the Exchange believes that the proposed change is equitable and not unfairly

discriminatory because it allows the Exchange to recoup ongoing expenditures made by the Exchange in order to offer such services to Participants and non-Participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by the Exchange in establishing fees for services provided to its Participants and others using its facilities will not have an impact on competition. As a small exchange in the already highly competitive environment for options trading, the Exchange does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. The Exchange's proposed fees, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services. Lastly, the Exchange believes the proposed change will not impose a burden on intramarket competition as the proposed fees are applicable to all Participants and others using its facilities that connect to BOX.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>20</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>21</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

Identical fee changes to those proposed herein were originally filed on July 19, 2018. That proposal, BOX–

2018–24, was published for comment in the **Federal Register** on August 2, 2018.<sup>22</sup> The Commission received one comment letter on that proposal.<sup>23</sup> On September 17, 2018, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.<sup>24</sup> The Commission received one additional comment letter on that proposal in response to the Order Instituting Proceedings.<sup>25</sup> On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,<sup>26</sup> the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings and, on September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.<sup>27</sup> On November 16, 2018, the Commission granted the Exchange's Petition and discontinued the automatic stay of delegated action.<sup>28</sup> In addition, the Commission ordered that any party or other person could file a statement in support or in opposition to the action made by delegated authority provided such statement was filed on or before December 10, 2018.<sup>29</sup> The Commission received two such statements from the Exchange.<sup>30</sup> The instant filing proposes identical fees and raises similar concerns as to whether they are consistent with the Act.<sup>31</sup>

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.<sup>32</sup> The

<sup>22</sup> See *supra* note 9, and accompanying text.

<sup>23</sup> See *supra* note 10.

<sup>24</sup> See Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018) ("Order Instituting Proceedings").

<sup>25</sup> See *supra* note 12.

<sup>26</sup> 17 CFR 201.430.

<sup>27</sup> See *supra* notes 13–14, and accompanying text. Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

<sup>28</sup> See *supra* note 15, and accompanying text.

<sup>29</sup> See Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

<sup>30</sup> See letters to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated December 7, 2018, and Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

<sup>31</sup> See Order Instituting Proceedings, *supra* note 24.

<sup>32</sup> See 17 CFR 240.19b–4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>18</sup> See *supra* note 8.

<sup>19</sup> *Id.*

<sup>20</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>21</sup> 15 U.S.C. 78s(b)(1).

instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”<sup>33</sup>

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;<sup>34</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>35</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>36</sup>

In temporarily suspending the Exchange’s fee change, the Commission intends to further consider whether the proposed fees to connect to the Exchange are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange’s rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>37</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>38</sup>

#### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections

19(b)(3)(C)<sup>39</sup> and 19(b)(2)(B) of the Act<sup>40</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission’s analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>41</sup> the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,”<sup>42</sup>

- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to “perfect the mechanism of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”<sup>43</sup> and

- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”<sup>44</sup>

As noted above, the proposal imposes new fees for physical connections to the Exchange. The Exchange states that these fees would partially offset costs associated with maintaining and enhancing this technology.<sup>45</sup> In the instant filing the Exchange states that its associated costs relate to costs paid to the Exchange’s third-party data center and costs associated with projects and initiatives designed to improve overall network performance and stability.<sup>46</sup> The Exchange also states that these fees are expected to offset costs of maintaining and implementing ongoing improvements to BOX’s trading systems,

including connectivity costs, costs incurred on software and hardware enhancements, and resources dedicated to software development, quality assurance, and technology support.<sup>47</sup>

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”<sup>48</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>49</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>50</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.<sup>51</sup>

#### V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by January 10, 2019. Rebuttal comments should be submitted by January 24, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>52</sup>

<sup>47</sup> See *supra* Section II.A.2.

<sup>48</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> See 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>52</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate

<sup>33</sup> *Id.*

<sup>34</sup> 15 U.S.C. 78f(b)(4).

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> 15 U.S.C. 78f(b)(8).

<sup>37</sup> See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>38</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>39</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>40</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>41</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>42</sup> 15 U.S.C. 78f(b)(4).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 15 U.S.C. 78f(b)(8).

<sup>45</sup> See *supra* Section II.A.1.

<sup>46</sup> See *id.*

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2018-37 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2018-37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submissions should refer to File Number SR-BOX-2018-37 and should be submitted on or before January 10, 2019. Rebuttal comments should be submitted by January 24, 2019.

#### **VI. Conclusion**

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,<sup>53</sup> that File

Number SR-BOX-2018-37 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>54</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 33323; 812-14893]**

#### **Investment Managers Series Trust and 361 Capital, LLC**

December 14, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** Investment Managers Series Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company, and 361 Capital, LLC (the "Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers

Act of 1940 (together with the Trust, the "Applicants").

**FILING DATES:** The application was filed on April 5, 2018 and amended on August 16, 2018.

#### **HEARING OR NOTIFICATION OF HEARING:**

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 8, 2019, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Applicants: 235 West Galena Street, Milwaukee, WI 53212 and 4600 South Syracuse Street, Suite 500, Denver, Colorado 80237.

#### **FOR FURTHER INFORMATION CONTACT:**

Deepak T. Pai, Senior Counsel, at (202) 551-6876, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### *Summary of the Application:*

1. The Adviser will serve as the investment adviser to the Subadvised Series pursuant to an investment advisory agreement with the Trust (each, an "Investment Management Agreement" and, collectively, the "Investment Management Agreements").<sup>1</sup> The Adviser will

<sup>1</sup> Applicants request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management company or series thereof that intends to rely on the requested order and that: (a) is advised by the Adviser, or any person controlling, controlled by or under common control with the Adviser or its successors; (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (each,

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